

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE R. LUCKETT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS

*Docket No. 00-1397; Submitted on the Record;
Issued December 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of total disability in January 1999 as a result of her February 28, 1992 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability in January 1999 as a result of her February 1992 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

Appellant has submitted no medical opinion evidence showing that she sustained a recurrence of total disability in January 1999 because of a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty job requirements.

After completing store training, appellant began employment at Goodwill Industries as a retail sales clerk on December 1, 1998. On December 4, 1998 the Office of Workers' Compensation Programs reduced her compensation for total disability to reflect her actual earnings in this position.

Appellant tried to work 40 hours a week but advised that it was just not working out. Her back hurt so much that she could not work and take all the drugs she needed for the pain. On

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

March 3, 1999 she filed a claim asserting that she sustained a recurrence of disability in January 1999 as a result of her February 28, 1992 employment injury.

On March 17, 1999 the Office denied appellant's claim of recurrence on the grounds that the medical evidence failed to establish that appellant could no longer work because of a worsening of her accepted employment injury, a herniated disc at the L5-S1 level.²

Appellant requested a hearing, which was held on September 29, 1999. Appellant subsequently supported her claim by submitting a November 10, 1999 report from Dr. Ike Eriator, a specialist in anesthesiology and pain control.

In a decision dated January 12, 2000, an Office hearing representative affirmed the denial of appellant's claim of recurrence. The hearing representative found that the evidence established that appellant left work of her own volition and not on the basis of a medical opinion from her treating physician taking her off work.

Appellant argues on appeal that the hearing representative gave no consideration to the opinion of Dr. Eriator, who reported that he would not have appellant working at this time and that she might improve over time. The Board notes, to the contrary, that the hearing representative expressly considered Dr. Eriator's November 10, 1999 report and properly determined that his opinion failed to address the question raised by appellant's March 3, 1999 claim of recurrence.

As the medical opinion evidence in this case fails to establish that appellant sustained a recurrence of total disability in January 1999 because of a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty job requirements, appellant has not met her burden of proof.

² The Office also found that the position of Cashier II fairly and reasonably represented appellant's wage-earning capacity.

The January 12, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 11, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member